To ask a question during the presentation use the Q&A Panel in WebEx

Select “All Panelists”, type your question, and click Send.
Announcements

Navigating 245D Rights Restrictions and HCBS Rights Modifications
Upcoming SPP LC Webinars:

- May 29: Lead Agency Review
- June 26: Environmental Accessibility Adaptation (EAA) Home Modification Assessment and Installation for Home and Community-Based Services (HCBS)
- July 31: Canceled due to Odyssey Conference

• Online modules
• Available in TrainLink under Disability Services (formerly Continuing Care)

Minnesota Age & Disability Odyssey Conference

• July 31 – August 1, 2019
• Duluth Entertainment Convention Center
Navigating 245D Rights Restrictions and HCBS Rights Modifications

DHS staff: Jodi Haus, Brittany Radatz, Jen Stevens, Jill Tilbury, Maria Trueblood, Charles Young
DISCLAIMER
• The HCBS rights modification process and documentation (DHS-7176H)

• Rights of people receiving a 245D-licensed services

• The rights restriction process for 245D services

• The intersection of rights restrictions under 245D and HCBS modification requirements

• The role of the case manager, guardian and provider
Two processes

HCBS Rights Modifications

245D Rights Restrictions

245D Prohibited interventions
Applicability

**HCBS Rights Modifications**
- Foster Care
- Supported Living Services*
- Customized Living

**245D Rights Restrictions**
- 245D-licensed programs
- Foster Care*
- Supported Living Services

*excluding in-home SLS

*excluding EW Foster Care
Common gray areas/questions

• Internet
• Video games
• Person’s money
• Cell phones
• Cable Television
• Cigarettes

• Junk Food/Soda
• Attending public events
• Dating
• Alcohol
Effect of punitive environments

- Decrease in quality of life
- Increase in challenging behavior
- Power struggles
- Lower self-esteem
- Lower autonomy
Focus on Quality of Life

• Higher quality of life correlates with fewer challenging behaviors/mental health symptoms

• #1 Factor in a person’s quality of life: Autonomy

• Domains of a Meaningful Life:
  - Community Membership
  - Health, wellness and safety
  - Own place to live
  - Important long-term relationships
  - Control over supports
  - Employment earnings and stable income
• 2014 the federal Centers for Medicare & Medicaid Services (CMS) published regulations in the federal register that changed the definition of home and community based settings
  - Impacted 1915(c) and 1915(i) waivers

• New definition considers
  - Setting’s location, geography or physical characteristics
  - Person’s experience and outcomes
HCBS standards that apply to all HCBS settings

- Setting supports the person's opportunity to seek employment and work in competitive, integrated settings
- Setting supports the person's engagement in community life
- Setting supports the person's control of personal resources
- Setting supports receiving services in the community to the same degree of access as individuals not receiving Medicaid HCBS
- The person chooses setting from available setting options
- Ensure individual rights of privacy, dignity and respect, and freedom from coercion and restraint
- Optimize individual initiative, autonomy and independence in making life choices including daily schedule and with whom to interact
- Facilitate individual choice regarding services and supports and who provides them
HCBS standards for provider-owned or -controlled residential settings

- The person has a lease or other legally enforceable agreement
- Privacy in their bedroom or living unit including lockable doors
- Choice of roommates, if shared unit
- Freedom to furnish and decorate unit
- Freedom and support to control schedule and activities, including access to food at any time
- Able to have visitors at any time
- Physically accessible
• When people live in settings where they receive customized living, foster care or supported living services, the following rights can be modified:

  • Have personal privacy (including the use of the lock on the bedroom door or unit door)

  • Take part in activities that he/she chooses and have an individual schedule that includes the person’s preferences supported by the service provider (this right cannot be modified in customized living settings.)

  • Have access to food at any time

  • Choose his/her own visitors and time of visits.
• The modification must be:
  • Necessary to ensure the health, safety and well-being of the person
  • Based on a specific and individualized assessed need that is justified in the support plan
  • Approved by the person through informed consent.
Settings where rights modifications apply

- HCBS rights modifications apply only to provider-owned and -controlled settings:
  - Customized Living
  - Foster Care
    - corporate and family
    - EW and CCB
  - Supported Living Services
- HCBS rights modifications do not apply to:
  - Day services
  - Services provided to people in their own home
Case manager or care coordinator responsibility

- HCBS rights modification (DHS-7176H) are held by the case manager
- Case manager or care coordinator must ensure that:
  - Documentation is developed with the person and their person-centered planning team
  - The person has been informed and consented to the rights modification.
Case manager/care coordinator responsibilities:

- Complete Part A and Part B of DHS-7176H
- Forward the form to the provider via fax, mail, secure email or deliver it in person (provider to complete Part C)
- After receiving form back from provider, confirm the provider documented how the modification of the person’s right(s) will be implemented and review the modification plan with the person
- When the form is completed and signed by the person, incorporate the person’s decision to approve or refuse the rights modification plan into the person’s support plan
## Part A. Basic Information

### Information

<table>
<thead>
<tr>
<th>Person</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>LAST NAME</td>
<td>FIRST NAME</td>
<td>PIM</td>
<td>EFFECTIVE DATE OF RIGHTS MODIFICATION(S)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Frequency of team review of this rights modification plan  
☐ Annually  ☐ Semi-annually  ☐ Other

### Waiver Provider

<table>
<thead>
<tr>
<th>ORGANIZATION/NAME</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PRIMARY CONTACT LAST NAME</th>
<th>FIRST NAME</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Case Manager/Care Coordinator

<table>
<thead>
<tr>
<th>LEAD AGENCY (county, tribal nation or MCO)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LAST NAME</th>
<th>FIRST NAME</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Part B. Case manager/care coordinator responsibility

The case manager/care coordinator documents required modifications of the person’s right(s) here. The modification must be necessary to ensure the health, safety and well-being of the person-based on a LTCC/MnCHOICES assessment or DD screening.

1. Identify each HCBS right that requires a modification based on assessed needs. (check each that apply):
   
   □ A. Have personal privacy (including the use of the lock on the bedroom door or unit door)
   □ B. Take part in activities that he/she chooses and have an individual schedule that includes the person’s preferences supported by the service provider (this right cannot be modified in customized living settings.)
   □ C. Have access to food at any time
   □ D. Choose his/her own visitors and time of visits.

2. Identify why the person needs the modification(s) to the specified right(s) and how you justify each modification. (The justification must be based on the person’s needs identified in the assessment)

List the corresponding letter (A-D) of the right(s) in Question No. 1 that require a modification. Next to the letter, describe the person’s diagnosis/condition(s) or behaviors and related assessed need(s) for each of the person’s right(s) listed. For help completing this section, see HCBS rights modifications examples.
• **Provider Responsibilities**
  
  • Receive the form from the case manager/care coordinator with Part A and B complete
  
  • Complete Part C and return the form using fax, mail, secure email or deliver in person
  
  • Once the case manager/care coordinator reviews the plan with the person and the form is signed and completed by all parties, the provider incorporates the rights modification(s) plan into the service delivery plan
Part C. HCBS provider responsibility

The service provider must complete this section. The person and the case manager/care coordinator will review the modification plan and consider its approval. The provider must:

- Ensure the modification is implemented in the least restrictive manner necessary to protect the person
- Provide support to reduce or eliminate the need for the modification
- Reduce or eliminate the need in the most integrated setting and inclusive manner.

Using other templates

☐ We, as the service provider, have not completed this section, but have attached a modification plan instead.

NOTE: Providers are responsible to modify this sample for use in their program. You may use your own form to meet this requirement as long as all of the elements (on this form) are addressed. This sample meets compliance with current CMS HCBS final rule requirements as of Jan. 1, 2018. 245D-licensed providers may instead complete and attach a version of the Home and Community-Based Services (HCBS) Rights Restriction (.DOC) as documentation for this section.

Providers remain responsible for reading, understanding and ensuring that this document conforms to current licensing and federal requirements.

**Modification plan information**

<table>
<thead>
<tr>
<th>Question</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.</td>
<td>Identify how the right will be modified in the least restrictive manner.</td>
</tr>
<tr>
<td>4.</td>
<td>Describe the positive interventions and supports used before there were modifications of the person’s rights. Document less intrusive methods of meeting the person’s needs that have been tried but did not work.</td>
</tr>
<tr>
<td>5.</td>
<td>Identify the objective measures set as conditions for ending the modification (meaning how and when everyone will know the person’s rights must be restored).</td>
</tr>
<tr>
<td>6.</td>
<td>Identify the schedule for reviewing the need for the modification for each entry in Question No. 1. Base the schedule on the conditions for ending the restriction in Question No. 5. For example, documentation to review may include incident reports, progress reports, other supplemental provider documentation that shows evidence of the person’s need to maintain, lessen or eliminate the modification.</td>
</tr>
</tbody>
</table>

NOTE: The review must occur annually from the date of initial approval, at a minimum, or more frequently if requested by the person, the person’s legal representative (if any), the provider or case manager/care coordinator.
• The person’s responsibility
  • The person indicates their understanding and consent or refusal of the modifications by signing Part D of the form
Part D. Person/participant responsibility: Informed consent

You are responsible to sign this form. Your signature shows that you participated in and understand the modification of your right(s) that your case manager/care coordinator and provider documented in this form. You also are responsible to indicate your decision to either agree to or not agree to the modification. Select one of the options below to indicate your choice.

Your options
The reason for a modification of my rights has been explained to me in a way that I understand. I also understand how my provider will provide the modification to ensure my health, safety and well-being.

☐ I approve of the modification(s) of my rights identified in this agreement.
☐ I refuse for my rights to be modified.

Signature section

<table>
<thead>
<tr>
<th>PERSON</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LEGAL REPRESENTATIVE</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
- **HCBS rights modification FAQ:**

- **Tutorial for the HCBS rights modification support plan attachment (DHS-7176H)**
  - https://www.youtube.com/watch?v=905SUoA2QYU

- **A Provider’s Guide to Putting the HCBS Rule into Practice (PDF).** Pages 9-12 provide an overview and examples of the HCBS settings rule rights modification.
• Provide a written notice of the rights and explain these rights
  • 5 working days of service initiation
  • Annually
• Reasonable accommodations
  • Other formats or languages
• Maintain documentation
• Ensure exercise and protection of these rights
A person’s service-related rights include right to:

• Participate in development & evaluation of services

• Services & supports provided in a manner that respects and takes into consideration the person’s preferences

• Refuse or terminate services
  • Be informed of the consequences
• Know, in advance, limits to the services, including LH’s knowledge, skill, ability

• Know conditions and terms of service provision, including admission criteria, temporary service suspension, service termination

• Coordinated transfer to ensure continuity of care

• Know service charges, regardless of payer, notified of charges
• Know, in advance, whether services are covered by others, be told of any charges the person or other private party may have to pay

• Receive services from an individual
  • Competent and trained
  • Professionally certified or licensed, as required
  • Meets additional qualifications as identified in CSSP or CSSP addendum
A person’s service-related rights include right to:

• Personal, financial, service, health & medical information kept private
  • Advised of disclosure

• Access records and recorded information

• Free from maltreatment
245D.04, subdivision 3: Protection-Related Rights II

• Free from
  • Restraint
  • Time out
  • Seclusion
  • Restrictive intervention
  • Other prohibited procedure, 245D.06, subd. 5
    • Except for EUMR, 245D.061
    • Safety interventions as part of a PSTP, 245D.06, subd. 8
• Receive services in a clean and safe environment
• Treated with courtesy and respect and receive respectful treatment of the person’s property
• Reasonable observance of cultural and ethnic practice and religion
• Free from bias and harassment regarding race, gender, age, disability, spirituality, sexual orientation
• Informed of and use grievance policy & procedures

• Know contact information of protection and advocacy services, including state-appointed ombudsman

• Assert rights without retaliation
  • Personally or by others

• Give or withhold written informed consent
  • Research or experimental treatment
• Associate with other persons of the person’s choice

• Personal privacy, including the right to use the lock on the person’s bedroom or unit door

• Engage in chosen activities

• Access to the person’s personal possessions at any time, including financial resources
Protection-related rights in a residential setting

- Daily, private access to and use of a non-coin operated phone
- Receive & send, without interference, uncensored unopened mail, email, or communication
- Use of and free access to common areas in the residence and the freedom to come and go from the residence at will
- Choose the person’s visitors and time of visits and have privacy for visits with the person's spouse, next of kin, legal counsel, religious advisor, or others, in accordance with section 363A.09 of the Human Rights Act, including privacy in the person's bedroom
Protection-related rights in a residential setting continued:

- Have freedom and support to access food and potable water at any time
- Have the freedom to furnish and decorate the person's bedroom or living unit
- A setting that is clean and free from accumulation of dirt, grease, garbage, peeling paint, mold, vermin, and insects
- A setting that is free from hazards that threaten the person's health or safety
- A setting that meets the definition of a dwelling unit within a residential occupancy as defined in the State Fire Code
Some rights may be restricted

- Associate with other person, personal privacy, engage in chosen activities, access to personal possessions at any time
- All protection related rights in a residential setting - 245D.04, subdivision 3, paragraph (b)

ONLY if determined necessary to ensure the health, safety, and well-being of the person

MUST be implemented in least restrictive alternative manner necessary to protect the person and provide support to reduce or eliminate the need for the restriction in the most integrated setting and inclusive manner
The license holder is responsible for documenting any rights restriction, including:

• Justification for the restriction
  • Based on an assessment of the person’s vulnerability related to exercising the right without restriction;

• Objective measures set as conditions for ending the restriction
Documentation continued:

- Scheduled for reviewing the need for the restriction based on conditions for ending the restriction
  - Semiannually, minimally, or more frequently as requested
- Signed and dated approval from person, or LR
  - Implemented only upon approval
  - May be withdrawn at any time
    - If withdrawn, right must be immediately restored
245D.04, subdivision 3: Protection Related Rights Restriction IV

**245D HCBS Service Recipient Rights Restriction sample form**

Home and Community-Based Services (HCBS) Rights Restriction

Person name: ____________________________________________________________________________

Date of initial implementation of restriction: ___________________________________________________

1. Identify the protection-related rights to be restricted (check the applicable right):
   A person’s protection-related right to:
   - [ ] associate with other persons of the person’s choice
   - [ ] personal privacy
   - [ ] engage in chosen activities
   - [ ] access to personal possessions

For a person residing in a residential site licensed according to chapter 245A, or where the license holder is the owner, lessor, or tenant of the residential service site, the right to:
   - [ ] have daily, private access to and use of a non-coin-operated telephone for local calls and long-distance calls made collect or paid for by the person
   - [ ] receive and send, without interference, uncensored, unopened mail or electronic correspondence or communication
   - [ ] have use of and free access to common areas in the residence
   - [ ] privacy for visits with the person’s spouse, next of kin, legal counsel, religious guide, or others, in accordance with section 363A.09 of the Human Rights Act, including privacy in the person’s bedroom
   - [ ] choose how to furnish and decorate the bedroom or living unit

2. Identify how the restriction of rights is justified based on an assessment of the person’s vulnerability related to exercising the right without restriction (meaning why the restriction is needed and how this was determined):

3. Identify how the right will be restricted (in the least restrictive manner necessary to protect the person and provide support to reduce or eliminate the need for the restriction in the most integrated setting and inclusive manner):

4. Identify the objective measures set as conditions for ending the restriction (meaning how and when everyone will know the person’s rights must be restored):
Home and Community-Based Services (HCBS) Rights Restriction

5. Identify the schedule for reviewing the need for the restriction based on the conditions for ending the restriction (it must occur semiannually from the date of initial approval, at a minimum, or more frequently if requested by the person, the person’s legal representative, if any, and case manager):

<table>
<thead>
<tr>
<th>Date to be reviewed:</th>
<th>Restriction was lessened or lifted:</th>
<th>If no, justify why and whether changes to the person’s service outcomes or supports are needed to restore the person’s rights (attach dated documentation).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>□ Yes □ No</td>
<td></td>
</tr>
</tbody>
</table>

☐ **Approval of rights restriction:**
I participated in the discussion of why this restriction of my rights is needed to ensure my health, safety, and well-being. My approval of this restriction of my rights is limited to the restriction as identified in this document. I understand that I may withdraw my approval at any time. If I withdraw my approval I understand that my rights must be immediately and fully restored.

Person/Legal representative ___________________________ Date ____________

☐ **Withdrawal of approval of rights restriction:**
I withdraw my approval for my rights to be restricted. All restrictions must end and my rights must be fully restored immediately.

Person/Legal representative ___________________________ Date ____________
245D.06, subdivision 2: Environment and Safety

• Toxic substances or dangerous items are inaccessible to persons at a service site
  • Only to protect the safety of person receiving services
  • When a known safety threat exists
  • Not as a substitute for staff supervision or interactions with a person

• If toxic substances or dangerous items are made inaccessible
  • Document assessment of physical plant, its environment, its population identifying the risk factors that require the action
  • Statement of specific measure to be taken to minimize the safety risk to persons and to restore accessibility to all persons
• When the license holder is the owner or lessor of the service site

  • Chemicals, detergents, other hazardous or toxic substances must not be stored with food products or in any way that poses a hazard to persons receiving services.
• License holders are prohibited from using
  • Chemical restraints
  • Mechanical restraints
  • Manual restraints
  • Time out
  • Seclusion
  • Any other aversive or deprivation procedure
    • As a substitute for adequate staffing, for a behavioral or therapeutic program to reduce or eliminate behavior, as punishment, or for staff convenience
Chemical Restraints

• Administration of a drug/medication to control behavior or restrict freedom of movement

• Not a standard treatment or dosage for the condition
  • Use of psychotropic medication on a PRN basis according to the person’s authorized written prescription does not meet this definition
Mechanical Restraints

• Devices, materials, equipment attached or adjacent to the person’s body or practices that are intended to restrict freedom of movement or normal access to one’s body or body parts or limits voluntary movement or holds a person immobile as an intervention precipitated by behavior

• Applies when used to prevent self-injurious behavior
  • Head banging, gouging, tissue damage, medical problems
Mechanical Restraint exclusion

• Does not include:
  • Devices worn to trigger electric alarms to warn staff that a person is leaving a room or area and which do not in themselves restrict freedom of movement
  • Adaptive aids or equipment or orthotic devices ordered by a health professional and used to treat or manage a medical condition
• Physical intervention intended to hold a person immobile or limit voluntary movement of use of body contact

• Does NOT include emergency use of manual restraint – different definition
• Involuntary removal to a designated area from which the person is NOT prevented from leaving
  
  • Does not mean voluntary removal or self-removal to calm, prevent escalation, de-escalation
  
  • Does not mean a brief break or rest from an activity to regain self-control
Seclusion

• Involuntary removal to a room from which the person is prevented from leaving
  • Staff, lock, device, or object used to hold a door closed or otherwise prevent the person from leaving

• Otherwise involuntary removal or separation from an area, activity, situation, or social contact and blocking or preventing the person’s return
Any Other Aversive Procedure

• Aversive procedure is application of aversive stimulus contingent upon the occurrence of a behavior
  • Purpose is to reduce or eliminate the behavior

• Aversive stimulus is an object, event, or situation presented immediately following a behavior in an attempt to suppress the behavior
  • Unpleasant, penalizes, or confines
• Deprivation procedure is removal of a positive reinforce following a response resulting in – or intending to result in – a decrease in the frequency, duration, or intensity of that response
  • Positive reinforce includes goods, services, or activities that a person is normally entitled
  • Delay or postponement of positive reinforce
  • “Levels” programs
License holders are allowed to implement restricted procedures, including:

- Permitted actions & procedures, 245D.06, subd 7
- PSTP, 245D.06, subd. 8
- EUMR, 245D.061
Restricted procedures must NOT
- Constitute child or adult maltreatment, abuse, neglect
- Violate a person’s rights, 245D.04
- Restrict normal access
  - Nutritious diet, drinking water, adequate ventilation, necessary medical care, ordinary hygiene facilities, normal sleeping conditions, necessary clothing, or any protection requested by state/federal standards/regulations
- Deny the person visitation or ordinary contact
  - Legal counsel, legal representative, or next of kin
- Be used for staff convenience, punishment, substitute for adequate staffing, or as a consequence for refusal to participate in treatment or services
- Use prone restraint
- Apply back or chest pressure
- Be implemented in a manner that is contraindicated for any of the person’s known medical or psychological limitations
Please keep in mind...

• The CSSP and the CSSP addendum may direct the services a license holder is providing but they cannot direct the license holder to violate a person’s rights or to not follow statutory requirements when rights are restricted.

• Additionally, the following may not be written in a manner that violates a person’s rights:
  • Program policies and procedures
  • House guidelines
  • Leases

• Jarvis Orders and Probation
Who makes the final decision about a rights restriction/modification?

- Modifications and/or restrictions are team based decisions
- Case managers authorize and direct the service of a provider
- Providers must implement the restriction
- Legal representatives make decisions within their authority
- The restriction/modification process is not meant to take authority away from any entity
Guardians and Legal Representation

• Does the person have a legal representative?
• If yes, what are their powers?
• Legal representative
  • Best Interest
  • Substitute Judgement
• Person’s wishes
Powers and Duties of a Guardian

MN STATUTE 524.5-313
Open for Questions
Thank you!

DHS Licensing

• HCBS Unit - 245D Help Desk 651-431-6624

DHS Disability Services Division

• DHSPositiveSupports@state.mn.us
Where to find help now

- **Person Centered Thinking 2-day Trainings**
  - http://rtc3.umn.edu/pctp/training/newdates1.asp?training=1

- **Person Centered Practices Webpage**

- **Olmstead Plan Webpage**

- **DHS Training Archive page**
  - http://www.dhs.state.mn.us/main/dhs16_143138

- **Brain Injury Basics** – YouTube videos

- **Bulletins**
  - http://www.dhs.state.mn.us/main/id_000305

- **Lead Agency Review Website**
  - http://www.minnesotahcbs.info/

- **E-List Announcements**
  - http://www.dhs.state.mn.us/main/id_000677#

- **CBSM Main Page**
  - http://www.dhs.state.mn.us/main/id_000402

- **Disability Hub MN**
  - http://disabilityhubmn.org/
  - Quick Reference Guide

- **Positive Supports Minnesota**
  - https://mnpsp.org/
Please take a moment to let us know your thoughts.

• Take our [Survey](http://surveys.dhs.state.mn.us/snapwebhost/s.asp?k=155595082301):
Audio from today’s session will be available beginning tomorrow morning by dialing:

855-859-2056

Conference ID:

1460339

If you have questions following the session, email to DSD.ResponseCenter@state.mn.us
Thank you for attending!